

ADVISORY OPINION 93-032

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

January 21, 1994

Chairman Robert Gable
The Republican Party of Kentucky
Capitol Avenue at Third Street
P.O. Box 1068
Frankfort, Kentucky 40602

Dear Chairman Gable:

Thank you for contacting the Registry, and thank you and Mr. Carmacks for supplementing your information and submitting a new advisory opinion request. Based on all the information you have given us, the facts to your question can be stated as follows:

The Republican Party of Kentucky ("RPC") desires to establish a building fund which will comply with all federal election laws. The fund would be established as a completely separate RPC bank account, and the money expended by the fund would go only for building fund purposes in conformance with federal law.

Based upon all the information you have provided, your questions are as follows:

1. Would the proposed building fund, administered as described above, fall into an area where federal law preempts Kentucky state law with the exception that contributes and expenditures would be reported as required by Kentucky state law?
2. If federal laws, FEC regulations, and/or Advisory Opinions permit such a building fund to accept unlimited contributions from any person or entity, including corporations, does Kentucky law in any way prohibit the building fund from accepting such contributions?
3. Does Kentucky state law require that contributions to and expenditures from such a building fund be reported to the Registry? and
4. If reports to the Registry would be required, would they be due on the same schedule of dates as reports on RPK's non-federal operating account?

The Registry recognizes that a permissible building fund under current federal law preempts and regulation by Kentucky law except for the requirement of reporting "donations" to the fund and expenditures by the fund. Therefore, the answer to your first question is yes, so long as the building fund in question receives donations and makes expenditures in compliance with the federal law, the federal law preempts the Kentucky law in respect to the building fund.

If the proposed building fund follows all federal rules and is a completely segregated fund, Kentucky election finance law does not govern a state party building fund. The federal law speaks to the contribution question by characterizing the contributions as "donations" instead of contributions.

As noted above, all contributions or "donations" to the proposed building fund and expenditures by the fund, shall be reported to the Registry of Election Finance. These reports would be due on the Republican Party's current reporting dates as required by law. The General Assembly (by statute) or the Registry (by regulation) may change the reporting schedule in the future.

The answers to your questions are based on the proposed state party building fund being in complete compliance with all federal rules. If the building fund made expenditures or accepted donations that were not permitted by federal law, these acts would constitute violations of Kentucky campaign finance law even if such acts did not violate federal law.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please contact us. Thank you.

Sincerely,

Timothy E. Shull
General Counsel

TES/dt